IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.84 OF 2006

ALONG WITH

CIVIL APPLICATION NO.94 OF 2006

Shri.Suresh Vithhal Jadhav ...Appellant

Versus

Chief Executive Officer & Ors. ...Respondents

.....

Mr.Avinash Joshi for Appellant.

Mr.Vijay Patil for Respondent No.1.

Mr.R.G.Ketkar for Respondent Nos.2 to 9.

Mr.R.V.More for Respondents 18 to 21.

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CORAM: A.M.KHANWILKAR, J.

FEBRUARY 15, 2006.

P.C.

1. Heard Counsel for the parties. Perused the relevant material on record.

2. Leave to amend cause title to add Defendant No.23 as Respondent in this Appeal as prayed for, is granted. Amendment be carried out

in the course of the day.

3. In my opinion, no fault can be found with the ultimate conclusion reached by the Court below in rejecting the Application Exhibit 5 for temporary injunction taken out by the Appellant/Plaintiff during the pendency of the Suit by the impugned decision dated 16th January 2006.

4. Counsel for the Appellant would contend before this Court that Defendant No.2 was acting as Karta of the joint family. It is then contended that although the original land held by the joint family was acquired later on, the suit property has been given on lease as per the policy of the authority which means that the Suit land was held by Defendant No.2 as Karta of the joint family.

5. Assuming that the Appellant is justified in contending that there was joint family consisting of Defendants 2 to 17 and original land was held in the name of Defendant No.2 as Karta of that family, even so, this argument clearly overlooks that the said land came to be acquired.

After acquisition of that land, the title of the land vested in the authority. The suit property, however, though has been given on Lease, in lieu of the acquired land in terms of the policy of the authority, is in the name of individual persons namely Defendants 2 to 17. At this stage of the proceedings, the Court will have to assume that the creation of lease in respect of the suit land is jointly in favour of Defendants 2 to 17 being an independent transaction between Defendants 2 to 17 and the Authority.

6. Viewed in this perspective, the execution of the irrevocable Power of Attorney by Defendant No.2 in favour of the Plaintiff and Defendant No.23 cannot be the basis to hold that Defendant No.2 had authority to give such irrevocable power of attorney on behalf of Defendants 3 to 17. Even on this reasoning, the conclusion reached by the Trial Court in rejecting the application for temporary injunction during the pendency of the suit will have to be upheld.

7. Besides, the Trial Court has rightly

answered the issue of balance of convenience and irreparable loss against the Appellant/Plaintiff. The Appellant/Plaintiff has sought alternative relief of compensation in the Suit. Viewed in this perspective also, the impugned order will have to be maintained. Hence, this Appeal and the cognate Civil Application fail. The same are dismissed.

A.M.KHANWILKAR, J.